Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-779

DRYWALL TAPERS AND POINTERS OF GREATER NEW YORK, LOCAL 1974, *et al.*,

Petitioners,

—v.—

OPERATIVE PLASTERERS' AND CEMENT MASON'S INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, OPERATIVE PLASTERERS LOCAL 60, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONERS' REPLY BRIEF

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Respondents argue (Br. 7, 9)* that the issue here "boils down" to whether the Court below correctly applied a general standard, admittedly correct, in its

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* Respondents' Brief ("Br."), though mailed to the undersigned January 10, 1980, was mailed without First Class designation and therefore did not arrive until January 22. Although another copy was mailed, express, arriving January 17, the late receipt has delayed this response.

review of the arbitral decision. They misapprehend what was decided below.

In the passage that Respondents quote (Br. 7), the Court below juxtaposed and conjoined with the word "but" two disparate principles in the following order*:

> (a) courts have an obligation to give "meaningful" review to the question whether an arbitrator has exceeded his authority, but
>
> (b) their reviewing function is "very limited" when the parties have agreed to submit issues of contract interpretation to an arbitrator.

By conjoining these two principles in this way the Court below has synthesized a new proposition of law, radically in con-

* As always with the conjunction "but," the order is crucial. To have conjoined the two principles in the opposite order would have led to a statement that, as the ensuing discussion will show, would have been correct, i.e.: a reviewing court's function is very limited but it must give meaningful review to the question whether an arbitrator has exceeded his authority. Such a correct statement would have compelled an opposite result below.

flict with the principles laid down in Steelworkers. The new proposition is that judicial scrutiny of whether an arbitrator has exceeded his authority should be "very limited." In substance, it is this new proposition that the Court below holds to be "mandate[d]" by Congress's national labor policy (Pet. App. 8a). In reality, by removing the issue of the arbitrator's excess from meaningful judicial review, the Court below has reached a result sharply contrary to Congress's labor policy.

Had the Court below acknowledged the source of the second principle that it conjoins with the word "but," the conflict between its new, synthetic proposition and the principles of Steelworkers would be manifest. The source is United Steelworkers v. American Mfg. Co., 363 U.S. 564, 567-68, where this Court said:

> "The function of the [reviewing] court is very limited when the parties have agreed to submit all questions of con-

> tract interpretation to the arbitrator. It is confined to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the contract."

Plainly, this Court meant the phrase, "very limited," to apply only to the scope of what may be judicially reviewed. Review should be limited to the issue whether the dispute was contractually submitted to the arbitrator. But judicial review of that issue should not be "limited." It should, instead, be "meaningful."

The distinction is crucial. Although the broad issue of union jurisdiction over drywall taping was submitted here to the Hearings Panel for decision under the Plan, no specific job disputes were submitted to it for decision. Nor could they be, for the Plan gives a Hearings Panel no power to decide any job dispute not already decided by the Impartial Board -- a point the Panel itself noted in its "Preliminary Rulings" (cf. Pet. 7-8, 11). Nevertheless, the Hearings

Panel purported to decide all past and present job disputes, including the New York City ones (which had not been decided by the Impartial Board). By so doing it exceeded its authority both under the Plan and under the submissions.

Therefore the question whether the Panel had exceeded its authority was presented to the courts below. But the Court of Appeals responded, not by observing that its reviewing role was limited to that question, but instead by declaring that the degree of its review of that question was "very limited." And on the basis of that new proposition it upheld dismissal of the action.

Thus, the issue presented here is a conflict between two opposing principles of law: between the principle of Steelworkers, that a court should give meaningful review to the question whether an arbitrator has exceeded his authority -- and the contrary proposition that a court should give only

"very limited" review to that question.

The conflict is fundamental to judicial review of arbitration proceedings and arbitration decisions. It should be resolved by this Court. For that reason, certiorari should be granted.

Respectfully submitted,

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